85-727 (1)

No. .....

In The

Supreme Court of the United States

October Term, 1985

THE MISSOURI FARMERS ASSOCIATION, INC.,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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48 pp

QUESTION PRESENTED

Whether the Eighth Circuit's refusal to apply the Uniform Commercial Code, as incorporated federal law governing Farmers Home Administration security interests, conflicts with this Court's unanimous decision in *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1979), and resurrects and perpetuates the conflict among the circuits which *Kimbell Foods* sought to resolve.*

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* The caption of the case contains the identity of all interested parties. Pursuant to Supreme Court Rule 28.1, petitioner states that it is a membership cooperative corporation. Its members are producers of agricultural goods on farms located in Missouri, Iowa and Arkansas.

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STATEMENT OF THE CASE

Nature of the Case

This case was filed by the United States on behalf of the Farmers Home Administration ("FmHA") of the United States Department of Agriculture under 28 U.S.C. § 1345 claiming that petitioner, Missouri Farmers Association, Inc. ("MFA"), was liable for conversion because it had purchased crops from FmHA debtor Edward Stoops in violation of FmHA's security interest.

This case turns on the choice of law to be applied. Because FmHA had authorized the sale, under the Uniform Commercial Code ("UCC") its security interest in the

crops was extinguished and MFA would not be liable for conversion even though Stoops had not remitted the sales proceeds to FmHA.[1] However, if FmHA's regulations, as interpreted by the agency, are applied, its lien on the crops continued until it received the proceeds, and thus MFA would still be liable for conversion despite having paid Stoops in full.

The Eighth Circuit held that the UCC would not be applied because FmHA would then lose and that a loss for FmHA is a result not in "the federal interest."

Statement of Facts

The facts are undisputed. Edward Stoops began borrowing money in 1974 from the FmHA for operating expenses on his livestock and row crow farm in Missouri.

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[1]See Mo. Rev. Stat. § 400.9-306(2) (1978); *Charterbank Butler v. Central Cooperatives, Inc.*, 667 S.W.2d 463 (Mo. App. 1984).

See also, Parkersburg State Bank v. Swift Independent Packing Co., 764 F.2d 512 (8th Cir. 1985); *First National Bank and Trust Co. of Oklahoma City v. Iowa Beef Processors, Inc.*, 626 F.2d 764 (10th Cir. 1980); *Moffat County State Bank v. Producers Livestock Marketing Ass'n*, 598 F. Supp. 1562 (D. Colo. 1984); *United States v. Lindsey*, 455 F. Supp. 449 (N.D. Tex. 1978); *United States v. Central Livestock Ass'n*, 349 F. Supp. 1033 (D.N.D. 1972); *In Re Caldwell*, CCH Sec. Trans. Guide, ¶ 51,762 (E.D. Cal. 1970); *People's National Bank & Trust Co. v. Excel Corp.*, 236 Kan. 687, 695 P.2d 444 (Kan. 1985); *Humboldt Trust Savings Bank v. Entler*, 349 N.W.2d 778 (Iowa 1984); *Ottumwa Production Credit Ass'n v. Heinhold Hog Market, Inc.*, 340 N.W.2d 801 (Iowa App. 1983); *State Bank, Palmer v. Scoular-Bishop Grain Co.*, 349 N.W.2d 912 (Neb. 1984); *Anon, Inc. v. Farmers Production Credit Ass'n of Scottsburg*, 446 N.E.2d 656 (Ind. App. 1983); *National Livestock Ass'n Credit Corp. v. Schultz*, 653 P.2d 1243 (Okla. App. 1982); *Planter's Production Credit Ass'n v. Bowles*, 511 S.W.2d 645 (Ark. 1974); *Central Washington P.C.A. v. Baker*, 521 P.2d 226 (Wash. 1974).

As part of a 1980 FmHA liquidation plan, Stoops was expressly instructed in writing, by a letter from the FmHA State Director and annual FmHA farm and home plans, and also orally, by the FmHA county supervisor, to sell his livestock and row crops when he deemed the market for those farm products to be most favorable.

Stoops followed the directions of the FmHA and sold crops to MFA between March and July of 1980. MFA paid Stoops in full. Stoops did not remit the proceeds to FmHA but instead used the money to pay operating expenses and feed his family. Three years later, the FmHA sued MFA and others for conversion.

MFA defended on the ground that FmHA's written and oral instructions to Stoops to sell his crops to MFA were an "authorization" to sell under UCC § 9-306(2) which cut off the security interest in those crops. *See* Mo. Rev. Stat. § 400.9-306(2)(1978). Both the District Court and the Court of Appeals acknowledged that the sales were authorized, but declined to apply UCC § 9-306(2). Rather, both courts applied a FmHA internal administrative regulation, 7 C.F.R. § 1962.17, which generally provides that the FmHA can take no action to its financial detriment[2] and that the FmHA lien continued on

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[2]The FmHA regulation provides that "chattel security may be released only when release will not be to the financial detriment of FmHA." 7 C.F.R. § 1962.17 (1985). Obviously, with a regulation as broadly drafted as § 1962.17, FmHA seeks never to be held responsible for its commercial decisions.

A federal district court in *United States v. Central Livestock Corp.*, — F. Supp. — (D. Kan. 1985) (App. G), recently explained and rejected FmHA's contention that § 1962.17 must apply so that the agency always wins. The Court stated:

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the collateral until the proceeds are properly applied, notwithstanding contrary UCC principles.

Course of Proceedings

This matter was initially filed by the United States in 1983 for conversion of crops. After a bench trial, the District Court ordered judgment entered in favor of the United States for $32,014.90, the full purchase price of the crops which MFA had already paid once to Stoops. *United States v. Missouri Farmers Ass'n Inc.*, 480 F. Supp. 35 (E.D. Mo. 1984) (App. A.). On May 29, 1984 the District Court denied MFA's request for postjudgment relief. (Slip Opinion of May 29, 1984) (App. B.).

A notice of appeal to the Eighth Circuit court of Appeals was filed by MFA on February 24, 1984. On February 1, 1985, the Eighth Circuit issued a three paragraph *per curiam* opinion affirming the District Court. *United States v. Missouri Farmers Ass'n, Inc.*, 764 F.2d 488 (8th Cir. 1985 (App. C.).

(Continued from previous page)

7 C.F.R. § 1962.17 (1985) is merely a program regulation addressing the circumstances in which FmHA officers and agents have the authority to affirmatively release security interests. It does not purport to, and cannot be interpreted to, govern the priorities of FmHA security interests and competing interests acquired under state commercial law. To read that regulation in the manner plaintiff urges would mean not only that state commercial law could *never* apply when the result would be detrimental to the FmHA, but as well, that on the merits the agency would always prevail, without regard for the status and rights of the competing party under state law. Clearly, the Department of Agriculture could not have dictated that result, nor did it intend to in the regulation on which plaintiff relies.

App. G at App. 26 (Emphasis in original).

Because the Court of Appeals had not addressed the critical UCC "authorization" question, even though it had been fully briefed and argued, MFA petitioned for rehearing. Rehearing by the panel was granted on March 28, 1985 (App. D.).

In a second *per curiam* opinion issued on June 17, 1985, the Court of Appeals admitted that FmHA's security interest in the crops would be cut off if UCC § 9-306(2) was applied as the federal rule of decision. The Court of Appeals, however, while acknowledging that this Court in *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1979) had held that state law "could" be adopted as the federal law governing FmHA security interests, ruled that "[a]doption of state law in this case would conflict with the federal interests present in the FmHA loan program." 764 F.2d at 489. It therefore applied FmHA's own regulations, found MFA liable for conversion and reinstated its *per curiam* order of February 1, 1985. *United States v. Missouri Farmers Ass'n, Inc.*, 764 F.2d 488 (8th Cir. 1985) (App. E.).

On June 28, 1985 MFA filed its suggestions for rehearing by the circuit court *en banc*. Its suggestions were denied without opinion on August 8, 1985. (App. F.).

Summary of Argument

The Eighth Circuit's decision rejecting the UCC and applying FmHA's own self-serving regulations conflicts with this Court's unanimous decision in *Kimbell Foods*. *Kimbell Foods* found that Congress had intended FmHA to be subject, like private creditors, to state commercial law. No federal interest could be undermined by apply-

ing the age-old rule, adopted by UCC § 9-306(2), that collateral sales authorized by the secured party cannot be the basis for a conversion action against the purchaser. To the contrary, the Eighth Circuit's unfair ruling, imposing liability without fault and granting FmHA a windfall, has recreated a conflict among the circuits, denied Congressional intent to subject FmHA to the discipline of the marketplace, placed undue and unfair burdens on interstate commerce in agricultural products, and created confusion as to the applicable legal rules in the hundreds of pending FmHA cases.

—o—

ARGUMENT

Reasons Why the Petition Should Be Granted

1. The Eighth Circuit Erroneously Failed to Follow Kimbell Foods.

For many years prior to this Court's *Kimbell Foods* decision, the circuits had been split over whether FmHA security interests were to be governed by state law incorporated as federal law or instead by separate federal common law giving priority to the federal liens. *See Kimbell Foods*, 440 U.S. at 726 and n.16.[3] Finally, in *Kimbell Foods*,

[3]As observed by a leading commentator on this subject:

> Until 1979, there was a split among the circuits as to whether federal law or Article 9 of the UCC should control in determining the priority of the United States as a secured lender competing with bona fide purchasers of farm products. At least four circuit courts of appeals held, un-

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the conflict was resolved by this Court's holding that, while *federal* law governs disputes involving FmHA security interests, a uniform national rule was *not* necessary to protect the federal interest, and thus nondiscriminatory *state* law would be adopted as federal law, absent a congressional directive to the contrary.

As a leading commentator observed, *Kimbell Foods* had apparently settled the choice-of-law controversy once and for all:

> *Kimbell Foods* instructs the federal courts to resolve the priority conflict within the confines of state commercial law and not according to some external law that would automatically give priority to the federal lending agency.

B. Clark, *The Law of Secured Transactions Under the Uniform Commercial Code*, ¶ 8.4[3][d] at 8-34 (1980).

But now the Eighth Circuit has undone *Kimbell Foods'* conflict resolution and created even greater uncertainty than in the pre-*Kimbell Foods* era. Seizing upon this Court's comment in *Kimbell Foods* that special rules might be necessary "to vindicate important national interests", 440 U.S. at 740, the Eighth Circuit, in two sentences and

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> der pre-UCC law, that the United States as secured party under a federal credit program had priority as a matter of *federal* law over an auctioneer who sells livestock without knowledge of the secured party's lien [citing cases from the Third, Sixth, Ninth, and Tenth Circuits]. Two circuits [Fourth and Eighth] held that such a priority conflict should be determined under *state* law.

B. Clark, *The Law of Secured Transactions Under the Uniform Commercial Code*, ¶ 8.4[3][d] at 8-34 (1980) (emphasis in original).

without any specific explanation of the important national interests at stake or how the UCC result could possibly harm them, threw *Kimbell Foods* out and applied FmHA's one-sided regulations. The Court of Appeals thus failed to heed this Court's own admonition in *Kimbell Foods* not to create a "national interest" loophole to evade the UCC:

> [N]either the Government nor the Court of Appeals advanced any concrete reasons for rejecting well-established commercial rules which have proven workable over time.

440 U.S. at 740. The same is true here, and the Eighth Circuit's inexplicable decision to elude *Kimbell Foods* so that the FmHA can gain windfall damages from an honest, innocent farm business must be reversed to reestablish *Kimbell Foods* as the law of the land.

2. The Eighth Circuit Has Spawned New Conflict Among the Circuits.

After *Kimbell Foods* was decided, the Fourth, Fifth, Eighth, Ninth and Eleventh Circuits faithfully followed it and applied the UCC as federal law in FmHA cases. *See United States v. Public Auction Yard,* 637 F.2d 613, 614-615 (9th Cir. 1980); *United States v. Southeast Miss. Livestock Farmers Ass'n,* 619 F.2d 435, 436-437 (5th Cir. 1980); *United States v. Friend's Stock Yard, Inc.,* 600 F.2d 9, 10 (4th Cir. 1979). *See also Johnson v. United States Dept of Agriculture,* 734 F.2d 774 (11th Cir. 1984); *United States v. Kukowski,* 735 F.2d 1057 (8th Cir. 1984). However, the Eighth Circuit in this case and the Third Circuit in *United States v. Kennedy,* 738 F.2d 584, 586-587

and nn.4 and 5 (3rd Cir. 1984), refused to apply the UCC in contested FmHA cases, thus creating a new conflict.[4]

Because there are literally hundreds of pending FmHA conversion actions across the nation, this intercircuit conflict is breeding new uncertainty and causing unnecessary legal expense, burdens on the judiciary, and unfair damage awards. Immediate action by this Court is required to resolve the conflict and impart a clear message to the lower courts that Supreme Court holdings are to be followed and not evaded through verbal loopholes.

3. The True National Interest Requires Reversal and Application of the UCC's Fair Rules.

The Eighth Circuit explained its choice of FmHA's regulations instead of the UCC as the governing law as follows:

> (1) FmHA's regulations allow authorized sales of collateral without release of the lien.
>
> (2) Under the Missouri UCC, authorized sales result in loss of the lien on the collateral.
>
> (3) *Kimbell Foods* adopted state law except where it would conflict with "federal interests".

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[4]The Third Circuit's rationale for avoiding *Kimbell Foods* in the *Kennedy* case differed from the Eighth Circuit's. The Third Circuit fallaciously explained *Kimbell Foods* as adopting state law only in the absence of preexisting federal law. According to the *Kennedy* court, *United States v. Sommerville,* 324 F.2d 712 (3rd Cir. 1963), supplied federal law in the Third Circuit before *Kimbell Foods* and thus survived it. This rationale inexplicably ignored the fact that *Sommerville's* holding that the UCC did not apply in FmHA cases was emphatically *rejected by Kimbell Foods.* Indeed, *Sommerville* was one of the decisions on the "losing" side of the conflict which *Kimbell Foods* resolved.

> (4) Adoption of the UCC would "nullify part of the FmHA regulations and interfere with an important objective of the FmHA loan program, *i.e.*, allowing farmers to continue their farm operations".

764 F.2d at 489.

This argument is question-begging in that it initially assumes that the FmHA regulation should apply and accepts the very FmHA arguments which this Court repeatedly rejected in *Kimbell Foods*. There, too, FmHA argued that it needed a special priority to fulfill the aims of its programs and to recover its loaned funds, but this Court emphatically refuted those contentions because it found that Congress had the specific purpose of subjecting FmHA to the same legal principles and market forces facing private creditors so that the agency would have economic incentives to make and manage its loans prudently:

> Congress' admonitions to extend loans judiciously suggests the view that it did not intend to confer special privileges on agencies that enter the commercial field.

440 U.S. at 737. Thus, FmHA now seeks to avoid *Kimbell Foods* to escape those very market pressures and incentives to which Congress intended to subject the agency. The Eighth Circuit has committed a significant disservice to the national interest by providing legal rationale for such avoidance.

Moreover, the Eighth Circuit's fear that applying the UCC here would somehow interfere with the FmHA objective of allowing farmers to continue with their farming operations is unfounded and false. These conversion cases deal with farmer-debtors who have defaulted and gone

bankrupt, and who clearly will not continue farming, in any event, under a FmHA program. This litigation represents nothing more than FmHA's efforts to recover its loan losses from the pocket, however deep or shallow, of any party which had some innocent involvement in the sale of collateral. The Eighth Circuit's holding that FmHA can never lose in litigation is a result which stands *Kimbell Foods* on its head.

Indeed, as this Court ruled in 1979, requiring FmHA to deal with the market forces which private lenders face will encourage the agency to supervise its debtors more closely and perhaps keep more farmers on their land than under the current system which encourages FmHA officers to believe that the costs of their mistakes or inaction will be borne by other parties. 440 U.S. at 734-737.

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CONCLUSION

This Court in *Kimbell Foods* held that the UCC would apply in FmHA cases unless Congress directed otherwise because Congress wanted to strip FmHA of the notion that "the sovereign always wins." Congress has not changed the *Kimbell Foods* holding, yet the Eighth Circuit has chosen to defy both this Court and Congress to provide special protection to a federal agency at the expense of an innocent third party who would be blameless under the prevailing commercial law.[5]

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[5]FmHA has persisted in bringing hundreds of these cases despite a federal judge's conclusion in 1978 that such cases were "unconscionable":

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Petitioner therefore asks the Court to grant the petition and to reverse the Eighth Circuit's perverse and anomalous decision.

Respectfully submitted,

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> The government's position distilled down is that every sale is a technical breach of the security agreement and a technical conversion. If, however, everything goes smoothly and the proceeds are applied correctly, then and only then will FmHA magnanimously grant its ex post facto consent. * * * It would be unconscionable to allow FmHA, on the one hand, to require a borrower to cull cattle or else be in violation of the security agreement and, at the same time, to call every sale a conversion with everyone connected potentially liable.

United States v. Lindsey, 455 F. Supp. 449, 456-457 (N.D. Tex. 1978).

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 83-860C(B)

UNITED STATES OF AMERICA,
Plaintiff,
vs.
MISSOURI FARMERS ASSOCIATES, INC.,
Defendant,
vs.
EDWARD V. STOOPS, JR., et al,
Third-Party
Defendants.

MEMORANDUM AND ORDER

(Filed February 3, 1984)

In the case before us the United States seeks to recover $32,014.90 from the Missouri Farmers Association (MFA) for crops purchased from Edward Stoops which were subject to a security agreement in favor of the Farmers Home Administration (FmHA). MFA, as third-party plaintiff, asserts a claim for indemnification against Edward Stoops, third-party defendant.

Prior to trial the parties stipulated that Edward Stoops and his wife Barbara operated a farm in Chariton, Missouri. From February 1978 through April 1979 they received $70,630.00 in loans from the FmHA, with an outstanding balance of $67,926.00 on the date of trial. As

part of the loan agreement, Edward and Barbara Stoops executed financial statements covering their crops and other farm equipment and filed these statements in the Chariton County Recorder's Office. In 1979 and 1980, the Stoops' financial condition worsened and they defaulted on their notes. During the period from March 1, 1980 through July 1, 1980, MFA purchased crops covered by the financing statements from Edward Stoops for $32,014.90. None of these sale proceeds were paid to plaintiff.

As a defense to plaintiff's allegations of conversion, MFA contends that FmHA did not have an enforceable security interest in Stoops' crops since there was no granting clause in the security agreement between Stoops and FmHA. The parties stipulated that the security agreement, which was executed on a standardized FmHA form, did not contain specific words granting plaintiff a security interest in Stoops' crops. Contrary to defendants' assertions, however, no precise words are required by the Uniform Commercial Code to create an enforceable security interest.

Section 400.9-203(1)(b) Mo. Rev. Stat. and the official comments to that section make it clear that the only requirements needed to create an enforceable security interest are: 1) a writing; 2) the debtor's signature; and 3) a description of the land where the crops are located. The document signed by the Stoops clearly states on its face that it is a security agreement and it is replete with references to the "security agreement" between the "Secured Party" (FmHA) and the "Debtor" (Stoops). Moreover, the agreement describes in detail the equipment covered by the security agreement and the land where the crops are located. The liberal requirements of the Code for cre-

ating an enforceable security agreement have been met. Accordingly, we hold that there was an enforceable security interest in the crops purchased by MFA.

MFA further contends that FmHA waived any security interest it had in Stoops' crops by implicitly authorizing the sales to MFA. To support this defense MFA outlines a course of conduct between Stoops and FmHA dating back several years whereby Stoops would sell his crops without the written authorization required by the security agreement and then FmHA would approve these sales "after-the-fact" by accepting the proceeds of the sale. This "after-the-fact" approval, according to MFA, amounts to a waiver of the security interest in Stoops' crops.

We note initially that the evidence MFA produced at trial outlined a series of unauthorized sales by Stoops and "after-the-fact" approvals by FmHA. However, of all the specific instances where Stoops obtained "after-the-fact" approval from FmHA, MFA was never a buyer of the farm products or equipment in question. Consequently, MFA cannot now contend that FmMA waived its security interest in the crops MFA purchased from Stoops.

Moreover, MFA cites no Missouri cases, and we know of none, which supports the waiver defense FMA proffers. The undisputed evidence shows that FmHA never provided Stoops with written consent to sell the crops as required by the security agreement and that Stoops never paid the proceeds of the sale to FmHA. MFA's defense that the government released its lien by "after-the-fact" approvals is unsound because under Missouri law a conversion occurred each time the crops were sold without written authorization, but the agency waived liability by

accepting the proceeds of the sale. *U.S. v. Gallatin Livestock Auction, Inc.*, 448 F.Supp. 616 (W.D.Mo 1978), affirmed 589 F.2d 353 (8 Cir. 1978).[1] Accordingly, we hold that the government did not release its lien on Stoops' crops, and consequently defendant is liable to plaintiff in the amount of $32,014.90.

Still remaining is MFA's claim against Stoops for indemnification. MFA's third-party complaint states that Stoops had a duty to inform MFA of any lien on his crops, that Stoops breached this duty and that Stoops' failure to inform MFA was wilful and intended to mislead MFA. Stoops, however, was precluded from presenting any evidence at trial because he failed to comply with pre-trial orders and MFA neglected to proffer any evidence in support of its claim against Stoops. Consequently, MFA did not sustain its burden of proof on its claim against Stoops, so we hereby find in favor of third-party defendant Stoops on MFA's claim.

The foregoing memorandum constitutes our findings of fact and conclusions of law. Judgment will be entered in accordance herewith.

Dated this 3rd day of February, 1984.

/s/ John K. Regan
United States District Judge

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1 We also note that while Missouri law applies to this transaction, federal regulations governing the release of FmHA liens are narrowly drawn to maintain the government's security interest in the proceeds from the sale of the collateral. See 7 C.F.R. § 1962.17(b). (1983).

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 83-860C(B)

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MISSOURI FARMERS ASSOCIATES, INC.,
Defendant,

vs.

EDWARD V. STOOPS, JR., et al,
Third-Party
Defendants.

J U D G M E N T
(Filed February 3, 1984)

The Court having this day entered its MEMORANDUM AND ORDER, herein,

NOW THEREFORE, in accordance therewith and for the reasons therein stated,

IT IS HEREBY ORDERED and ADJUDGED

(1) That plaintiff United States of America have and recover of and from defendant Missouri Farmers Associates, Inc. damages for conversion in the sum of $32,014.90, and

(2) That defendant and third-party plaintiff Missouri Farmers Associates, Inc. recover nothing from third-party defendant Edward V. Stoops, Jr.

Dated this 3rd day of February, 1984.

/s/ John K. Regan
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Cause No. 83-860C(B)

UNITED STATES OF AMERICA,

Plaintiff,

vs

MISSOURI FARMERS ASSOCIATION, INC.,

vs

EDWARD V. STOOPS, JR., et al.

ORDER

(Filed May 29, 1984)

This matter is before the Court on motion of defendant Missouri Famers Association (MFA) for relief from this Court's judgment order entered February 3, 1984, finding MFA liable to the United States for conversion. A non-jury trial was held in this matter on December 6, 1983.

This action stemmed from defendant's purchase of crops from Edward Stoops (third-party defendant) which were subject to a security interest in favor of the United States (through the Farmers Home Administration). The validity of the plaintiff's security interest and the alleged waiver of that security interest by plaintiff were hotly contested issues at trial. This Court found, however, that the security interest was valid and that the plaintiff did not waive its security interest in the crops bought by MFA. Accordingly, judgment was entered in favor of plaintiff.

MFA now contends that it is entitled to relief from that judgment pursuant to F.R.C.P. 60(b)(3) because the plaintiff intentionally withheld requested documents from MFA which, allegedly, prove that plaintiff's security interest was unenforceable. MFA advanced the theory at trial that because the security agreement between FmHA and Stoops did not have a specific "granting clause", the agreement did not create an enforceable security interest. During discovery MFA requested the production of all standardized security agreements used by FmHA both prior to and subsequent to the agreement between FmHA and Stoops. In addition, MFA requested any circulars and memorandum between FmHA and its divisional offices referring to the absence of the granting clause in the standardized security agreements. The government responded to MFA's request with certain documents but MFA contends that some memorandum and correspondence were intentionally withheld which revealed the government's belief that the security interests were invalid. Furthermore, MFA contends that the government intentionally misrepresented to this Court that said discovery requests were fully complied with.

Citing *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5 Cir. 1978), MFA asserts that the government's failure to produce these documents entitles it to relief under Rule 60(b)(3) as a matter of law, and in accordance therewith, requests us to vacate our judgment. After reviewing the *Rozier* case we have concluded that although it defines the application of Rule 60(b)(3), it does not mandate the relief sought by MFA.

Rozier holds that one who asserts that an adverse party has obtained a verdict through fraud, misrepresenta-

tion or other misconduct has the burden of proving that assertion by clear and convincing evidence. In addition, the conduct complained of must be such that it prevented the losing party from fully and fairly presenting his case or defense. *Rozier,* supra at 1339. In *Rozier,* plaintiff sued the defendant Ford Motor Company for negligently designing an automobile fuel tank. During discovery Ford withheld a "trend cost estimate" document which was one of a group of documents plaintiff requested. The Court found that Ford engaged in misrepresentation and other misconduct by failing to disclose this document. Moreover, the Court felt that the nondisclosure prevented the plaintiff from fully and fairly presenting her case since the absence of these documents inevitably influenced her decision as to which theory she would proceed on at trial. The Court concluded that disclosure of the trend cost estimate would have made a difference in the way plaintiff's counsel approached the case.

In this case at bar, however, MFA's defense was not altered by the absence of the documents in question. MFA still proceeded at trial with the theory that the absence of the granting clause in the security agreement vitiated its enforceability. The Court considered MFA's theory but concluded that the security agreement was enforceable despite the absence of the granting clause. MFA concedes in its brief that the only significance the missing documents have is that they demonstrate the government's concern over the missing granting clause. Although we disagree with MFA's characterization that the government believed the security interests were unenforceable, whether or not the government believed the security interests were valid is irrelevant. The enforceability of security interests is determined by looking at the face of the security agreement, and beliefs or expectations of the parties about the validity of the security interests are immaterial. Section 400.9-203 RSMo. (1978).

This Court analyzed the security agreement between Stoops and FmHA in the judgment order of February 3, 1984, and will not do so again here. The parties stipulated before trial that the security agreement did not contain a granting clause and this point was emphasized repeatedly at trial by counsel for MFA. The issue of whether the security agreement was enforceable without the granting clause was fully presented to the trier of fact for determination. Any documents revealing a belief by the government that the absence of the granting clause affected the enforceability of the security agreement would have been wholly irrelevant and inadmissible at trial. Fed.R. Evid.402. We find, therefore, that MFA had an opportunity to fully and fairly present its defense; consequently, it is unnecessary for us to decide whether MFA has sustained its onerous burden of proving whether the government engaged in misrepresentation and other misconduct.

MFA also contends that its discovery of additional documents entitles it to relief from this Court's judgment pursuant to Rule 60(b)(2), which permits relief on the basis of newly discovered evidence. Relief will only be granted, however, if the newly discovered evidence is such that a new trial would produce a new result. *Rozier,* supra at 1339. The documents which MFA claims as newly discovered evidence, are, as we discussed earlier, irrelevant to the issue of the enforceability of the security agreement. Consequently, the documents in question would not change

our decision in any respect. Therefore, MFA is not entitled to relief from our judgment under Rule 60(b)(2).

Finally, MFA urges us to reconsider our ruling on the invalidity of its "waiver" defense by considering a recent Missouri Court of Appeals case, *Charterbank Butler v. Central Cooperatives,* No. 34442 (Mo.App. filed March 13, 1984). In *Charterbank,* the plaintiff bank which held a security interest in a debtor's soybeans sued the defendant (a local grain elevator) for conversion of the debtor's soybeans. The bank had a policy of allowing its debtors to sell the encumbered grain and then account to the bank with the proceeds of the sale. However, when the debtors failed to account to the plaintiff with the proceeds of the sale to the defendant, the bank initiated a conversion action against defendant. The trial court entered a judgment for the plaintiff, but the Court of Appeals reversed, holding that the bank, by allowing the debtors to sell their collateral, waived its security interest notwithstanding its attempt to condition such authorization upon payment of proceeds to the bank.

While we agree that the *Charterbank* case lends credence to MFA's waiver defense, the case is factually distinguishable from the instant case. The secured creditor herein is the Farmers Home Administration and, as our judgment order indicates, the release of any lien held by the FmHA is determined in conjunction with federal law. For that reason, *U.S. v. Gallatin Livestock Auction, Inc.,* 448 F.Supp. 616 (W.D.Mo. 1978), which concerns the waiver of FmHA liens (and which we cited in our memorandum order), is dispositive of the issues in this case. We decline, therefore, to alter our ruling of February 3, 1984.

Accordingly, IT IS HEREBY ORDERED that defendant MFA's motion for relief be and the same is hereby OVERRULED.

Dated this 29 day of May, 1984.

/s/ John K. Regan
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-1272

United States of America,

Appellee,

v.

Missouri Farmers Association, Inc., d/b/a M.F.A. Grain Marketing Division and M.F.A. Exchange,

Appellant,

Edward V. Stoops and Barbara A. Stoops,

Third-Party Defendants.

Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: November 15, 1984

Filed: February 1, 1985

Before BRIGHT, McMILLIAN, and BOWMAN, Circuit Judges.

PER CURIAM.

The Missouri Farmers Association, Inc. (MFA) appeals from a decision of the district court finding it liable for the conversion of crops in which the United States, through the Farmers Home Administration (FmHA), claimed a security interest. For reversal MFA contends that the district court erred in failing to find that (1) FmHA's security interest in the crops had been cut off when it expressly authorized sale of the crops to MFA, and (2) the language in the security agreement covering these

crops was not sufficient to create a security interest. MFA also asserts that the district court should have granted its Rule 60(b) request for postjudgment relief.

The facts reveal that Missouri farmer Edward V. Stoops executed several security agreements with FmHA covering certain crops and livestock. Stoops filed financing statements in the county recorder's office. FmHA later instructed Stoops to sell crops covered by the security agreements and deliver the proceeds to FmHA. Stoops sold the crops to MFA, but paid none of the proceeds to the agency. FmHA then sued MFA for conversion of the crops. The district court made rulings adverse to MFA and entered judment in favor of FmHA in the sum of $32,014.90. Specifically, the court concluded that the language of the security agreements was sufficient to create an enforceable security interest in favor of FmHA, and that FmHA did not waive its interests in the crops purchased by MFA. MFA filed a posttrial motion for relief from the judgment, pursuant to Fed. R. Civ. P. 60(b), alleging that the government had failed to comply with a discovery order, thus preventing MFA from fairly presenting its case. The district court denied this motion and affirmed the judgment. MFA has appealed from the adverse judgment and the denial of its posttrial motion.

We have carefully reviewed the record and, finding no mistake of fact or law, affirm the judgment on the basis of the trial court's memorandum and order. *United States v. Missouri Farmers Association, Inc.*, 580 F. Supp. 35 (E.D. Mo. 1984). Furthermore, our review of the record indicates that the district court did not abuse its discretion in denying relief to appellant MFA under Fed. R. Civ. P. 60(b).

Accordingly, the judgment of the district court is affirmed. *See* 8th Cir. R. 14.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-1272

United States of America,

Appellee,

vs.

Missouri Farmers Association, Inc., d/b/a M.F.A. Grain Marketing Division and M.F.A. Exchange,

Appellant,

Edward V. Stoops and Barbara A. Stoops,

Third-Party Defendants.

Appeal from the United States District Court for the Eastern District of Missouri

Filed: March 28, 1985

Before BRIGHT, McMILLIAN, and BOWMAN, Circuit Judges.

The panel grants a rehearing in the above-captioned appeal. The opinion of February 1, 1985, is rescinded. The rehearing will be scheduled during the May session of the Court in St. Paul, Minnesota.

The issue on rehearing is whether the government regulations governing sale of chattels subject security agreements (FmHA regulations §§§ 1962.17, 1962.17(b) and 1962.18(b), or any other regulations) apply to preserve the government's liens against the defendant-appellant, Missouri Farmers Association, the purchaser of the chattels in question.

Amicus Curiae Livestock Marketing Association may file a brief not to exceed ten pages of text material, such brief to be filed within 15 days. Appellant may file a supplemental brief not to exceed ten pages of text, also within 15 days. The government may respond within 15 days thereafter by a brief limited to 15 pages of supplemental text.

It is so ordered.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-1272

United States of America,

Appelleee,

v.

Missouri Farmers Association, Inc., d/b/a M.F.A. Grain Marketing Division and M.F.A. Exchange,

Appellant,

Edward V. Stoops and Barbara A. Stoops,

Third-Party Defendants.

Appeal from the United States District Court of
the Eastern District of Missouri.

Filed: June 17, 1985

Before BRIGHT, McMILLIAN, and BOWMAN, Circuit Judges.

ORDER ON PETITION FOR REHEARING

On the petition of appellant, Missouri Farmers Association, Inc. (MFA), we granted rehearing by the panel. MFA argues that, under state law, a security interest asserted by the Farmers Home Administration (FmHA) was ineffective because FmHA had authorized a sale of the collateral. MFA's argument depends upon the application of state law to the release of FmHA's security interest. MFA recognizes that, under FmHA regulations, the security interest has not been released. Therefore, the issue

on rehearing is whether state commercial law or FmHA regulations govern the release of FmHA's liens.

FmHA regulations clearly contemplate authorized sales of collateral without release of FmHA's lien.[1] These regulations are part of a detailed scheme that divides collateral into separate classes and permits the release of security interests only for specified purposes, which differ for each class. 7 C.F.R. § 1962.17 (1985). The regulations take into consideration the unique needs of FmHA's farmer-borrowers. They give the borrowers needed flexibility to conduct their farming operations while protecting the government's interests in the collateral—here, soybeans and grain.

Missouri law, on the other hand, provides that a secured creditor's consent to the sale of collateral automatically terminates the security interest, even if the consent is given conditionally. *CharterBank Butler v. Central Cooperatives, Inc.*, 667 S.W.2d 463, 465-66 (Mo. App. 1984). Application of Missouri law would therefore nullify part of the FmHA regulations and interfere with an important objective of the FmHA loan program, i.e., allowing farmers to continue their farm operations.

In *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1978), the Supreme Court stated that "federal law gov-

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[1] 7 C.F.R. § 1962.17(b) (1985) provides:

* * * When borrowers sell security, the sale will be made subject to the FmHA lien. The property and proceeds will remain subject to the lien until * * * the sale is approved by the County Supervisor *and* the proceeds are used for one or more of the purposes stated in § 1962.17. (Emphasis added).

erns questions involving the rights of the United States arising under nationwide federal programs." *Id.* at 726. However, the Court also provided that state law could be adopted as the federal rule of decision so long as a national rule was not needed to protect the federal interests underlying the program. Adoption of state law in this case would conflict with the federal interests present in the FmHA loan program. Accordingly, we conclude that FmHA regulations, not state law, govern the release of FmHA liens. *See United States v. Farmers Cooperative Co.*, 708 F.2d 352, 353 n.2 (8th Cir. 1983).

The MFA also argues that our failure to adopt state law will disrupt commercial transactions in Missouri. We think these fears are unwarranted because a purchaser of farm products such as MFA can easily determine whether or not the goods are covered by a FmHA security interest and take appropriate steps to protect itself from liability.

We conclude that FmHA regulations rather than state commercial law govern the release of governmental security interests under the FmHA loan program. Therefore, we readopt the opinion in this case of February 1, 1985, and upon the basis of that opinion and this order, we affirm the judgment of the district court.

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ATTEST:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 85-1065-K

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CENTRAL LIVESTOCK CORPORATION,

Defendant.

MEMORANDUM AND ORDER

(Filed August 26, 1985)

Plaintiff filed this suit seeking damages for defendant's conversion of certain livestock in which the Farmers' Home Administration (FmHA) held an allegedly perfected security interest. The Court's jurisdiction is provided in 28 U.S.C. § 1345. Defendant Central Livestock Corporation (Central) answered and raised a number of affirmative defenses, one of which denied the FmHA held a perfected security interest in the livestock. Central then filed a motion to dismiss under F.R.Civ.P. 12(b)(6), or in the alternative for summary judgment under F.R.Civ.P. 56, arguing the FmHA posesses only an unperfected security interest because its financing statement lapsed under K.S.A. 84-9-403(2). As a result plaintiff's interest is inferior to, and defeated by, the rights of defendant, a purchaser for value. The Court agrees.

The facts of this case, taken in the light most favorable to plaintiff, are as follows. At various times from

June, 1978, through February, 198', the FmHA loaned a total of $35,700.00 to Alan R. Allison. He executed promissory notes and granted the FmHA a security interest in various crops, livestock, farm machinery and other equipment. On May 22, 1978, the FmHA filed a financing statement covering this collateral with the Register of Deeds of Kiowa County, Kansas. At no time thereafter did the FmHA file any continuation statements.

Sometime in 1981, Allison sold to Central a number of boars, sows and pigs valued at $29,775.81. This livestock was subject to the FmHA's security interest. There is no evidence the agency was aware of, or consented to, the sale.

Allison defaulted on the FmHA loans, although plaintiff does not specify when that occurred. The present suit against Central, seeking damages for conversion, was filed January 23, 1985.

The first question raised by Central's motion to dismiss or for summary judgment is whether this Court should apply Article 9 of the Kansas Uniform Commercial Code, K.S.A. 84-9-101 *et seq.*, to determine the parties' rights. Plaintiff contends it should not, because the FmHA is a federal agency entitled to application of federal common law rather than state law.

Both parties rely on the Supreme Court's decision in *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1979). *Kimbell Foods* was actually two consolidated cases. The first concerned two competing perfected security interests in the same personal property. The United States' lien secured a loan guaranteed by the Small Business Administration (SBA), while the private lien, arising from se-

curity agreements preceding the federal guarantee, secured advances made by a private corporation after the federal guarantee. Both security interests were perfected under Texas' Uniform Commercial Code, and the question was, which of the creditors had priority? In the second case, the FmHA perfected a security interest in certain crops and farm equipment by filing a standard FmHA financing statement with state officials. A private individual later acquired a lien under state law by retaining possession of the tractor after the borrower failed to pay repair bills. The borrower filed for bankruptcy and the government sought to obtain possession of the tractor. The question in that case was whether the adequacy of the description of the collateral in the FmHA financing statement was to be tested under state or federal law. *Kimbell Foods,* 440 U.S. at 718-725.

The Supreme Court phrased the common issue as "whether contractual liens arising from certain federal loan programs take precedence over private liens, in the absence of a federal statute setting priorities." *Kimbell Foods,* 440 U.S. at 718. Looking first to the government interests implicated by nationwide federal programs, the Court noted there was little question federal law governed cases involving the United States' rights arising under those programs. The more difficult question concerned the content of the federal law to be applied. The Court held that "absent a congressional directive, the relative priority of private liens and consensual liens arising from these Government lending programs is to be determined under non-discriminatory state laws." *Id.* at 740.

In reaching that decision the Court looked at the need for uniform controlling rules in these cases, the degree

to which application of state law would frustrate specific objectives of the federal programs, and whether application of a federal rule would disrupt commercial relationships predicated on state law. On all three points the Court concluded state commercial codes furnish convenient solutions as well as arequate protection of federal interests. *Kimbell Foods,* 440 U.S. at 728-729. Adoption of a uniform federal law was unnecessary because both the SBA and the FmHA regulations mandate compliance with state law and procedures for "perfecting *and maintaining* valid security interests. . . ." *Id.* at 731 (emphasis added).

> Thus, the agencies' own operating practices belie their assertion that a federal rule of priority is needed to avoid the administrative burdens created by disparate state commercial rules. The programs already conform to each State's commercial standards. By using local lending offices and employees who are familiar with the law of their respective localities, the agencies function effectively without uniform procedures and legal rules.

Kimbell Foods, 440 U.S. at 732. Application of state law will not frustrate the specific objectives of the loan programs because the government is in substantially the same position as private lenders. Finally, the Court concluded application of a different federal rule would seriously disrupt commercial relationships established under state law.

> Creditors who justifiably rely on state law to obtain superior liens would have their expectations thwarted whenever a federal contractual security interest suddenly appeared and took precedence.
>
> Because the ultimate consequences of altering settled commercial practices are so difficult to foresee, we hesitate to create new uncertainties, in the

> absence of careful legislative deliberation. Of course, formulating special rules to govern the priority of the federal consensual liens in issue here would be justified if necessary to vindicate important national interests. But neither the Government nor the Court of Appeals advanced any concrete reasons for rejecting well-established commercial rules which have proven workable over time. *Thus, the prudent course is to adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accommodation.*

Id. at 739-740 (emphasis added).

This Court cannot gainsay the following observations:

> The importance of *Kimbell Foods* cases is that federal lending agencies are clearly governed by the same rules which control the rights and duties of private secured parties. With respect to filing and perfection, priorities, and default provisions, federal agencies will be measured by the same standards as commercial banks, credit unions, finance companies, and, credit sellers. This means uniformity, which is the hallmark of the UCC. If Congress desires to establish a special rule to give protection to a federal lending agency, it may do so. At this writing, however, the only federal statutes which preempt Article I are . . . statutes geared to unique types of collateral rather than federal lending agencies as creditors. . . . *Kimbell Foods* reinforces the notion that Article 9 should continue as the paramount law of secured transactions unless Congress speaks out loudly.

Clark, The Law of Secured Transactions Under the Uniform Commercial Code, ¶ 1.8[1][g] (1980).

Following the *Kimbell Foods* decision a number of courts have applied state commercial law to resolve priority conflicts involving federal lending agencies. *See United States v. Lattauzio,* 748 F.2d 559 (10th Cir. 1984) (New

Mexico UCC applied in an SBA suit upon a guarantee of a government loan); *United States v. Southeast Miss. Livestock Farmers Ass'n,* 619 F.2d 435 (5th Cir. 1980) (Mississippi UCC applied to assess legal sufficiency of FmHA's security agreements and financing statements); *United States v. Burlington Industries,* 600 F.2d 517 (5th Cir. 1979) (Florida commercial law applied to determine priority between SBA security interest and competing warehouseman's lien); *United States v. S.K.A. Associates,* 600 F.2d 513 (5th Cir. 1979) (Florida non-UCC law allowed landlord's lien to prevail over SBA's Article 9 security interest); and *United States v. Oakley,* 483 F.Supp. 762 (D. Ark. 1980) (adequacy of description of collateral in FmHA's security agreement must stand or fall under Arkansas UCC). Notably, the only two cases to date which have relied on *Kimbell Foods* for the conclusion the respective federal interests involved demanded application of other than state law, have both concerned programs different from the FmHA and SBA lending operations. *See Jones v. Federal Deposit Ins. Corp.,* 748 F.2d 1400 (10th Cir. 1984) (FDIC regulations, rather than state law, adopted as uniform rule of federal law governing ownership of accounts on deposit); and *Marine Midland Bank v. United States,* 687 F.2d 395 (Ct.Cl. 1982) (resort to state law inappropriate in cases of priority of liens arising from government defense procurement contracts, the creation of which, unlike FmHA and SBA loans, generally does not follow individual state practices).

Plaintiff attempts to distinguish the present case from *Kimbell Foods,* arguing any constructive release of its security interest under state law would conflict with federal law contained in 7 C.F.R. § 1962.17 (1985), which pro-

vides that "[c]hattel security may be released only when release will not be to the financial detriment of FmHA." This Court has serious reservations about whether an administrative regulation is the sort of congressional proclamation the Supreme Court referred to in *Kimbell Foods.* But even assuming that in an appropriate case the Regulations of the Department of Agriculture, rather than nondiscriminatory state commercial law, might become the "federal rule of decision," that result is not justified here. 7 C.F.R. § 1962.17 (1985) is merely a program regulation addressing the circumstances in which FmHA officers and agents have the authority to affirmatively release security interests. It does not purport to, and cannot be interpreted to, govern the priorities of FmHA security interests and competing interests acquired under state commercial law. To read that regulation in the manner plaintiff urges would mean not only that state commercial law could *never* apply when the result would be detrimental to the FmHA, but as well, that on the merits the agency would always prevail, without regard for the status and rights of the competing party under state law. Clearly, the Department of Agriculture could not have dictated that result, nor did it intend to in the regulation on which plaintiff relies.

In another novel argument plaintiff contends K.S.A. 84-9-403 should not apply to this case because the statute imposes on the government the doctrine of laches. This argument misconstrues the nature of both that doctrine and this case.

Laches is an equitable device to bar stale claims in certain instances. *Perpetual Royalty Corp. v. Kipfer,* 253 F.Supp. 571 (D. Kan. 1965), *aff'd* 361 F.2d 317 (10th Cir. 1966), *cert. denied* 385 U.S. 1025 (1967). The question of laches is addressed primarily to the discretion of the court. *Russel v. Price,* 612 F.2d 1123 (9th Cir. 1979), *cert. denied sub nom Drebin v. Russell,* 446 U.S. 952 (1980). Equity will not act when there is an adequate remedy at law. *Record Head, Inc. v. Olson,* 476 F.Supp. 366 (D. N.D. 1979). Plaintiff has not sued under equity. The FmHA attempted to protect its interests under the Kansas UCC, and now brings suit under common law, seeking damages for conversion. Defendant has shown plaintiff simply failed to properly maintain its perfected security interest under Kansas law. Plaintiff's response, that the *statute* requiring that result wrongly imposes the *equitable* bar of laches, is inherently contradictory. Laches has nothing to do with statutory enactments; equity in that sense does not enter into this case. If it appears the absence of a remedy at law is due to plaintiff's failure to pursue that remedy, equity will not intervene. *Smaldone v. Kurtz,* 450 F.Supp. 1138 (D. D.C. 1978).

It is true that without a clear manifestation of congressional intent the United States is not bound by state statutes of limitation. *Cassidy Commission Co. v. United States,* 387 F.2d 875, 880 (10th Cir. 1967). But *Kimbell Foods* was nothing if not an invitation to Congress to respond to the principle the government is bound by both the substantive and procedural requirements of the UCC as adopted in the majority of states. Congress has not done so, at least regarding the FmHA. Plaintiff fails to show current federal law is significantly different than that in effect when *Kimbell Foods* was decided. The Court has no difficulty with inferring congressional acceptance of that decision; as a result, the FmHA contineus to be

bound by state commercial laws. In light of *Kimbell Foods* and its progeny, this Court would be remiss if it failed to apply the Kansas UCC in this case.

The next question is whether Kansas law requires a judgment for defendants on the merits. K.S.A. 84-9-403(2) provides:

> . . . [A] filed financing statement is affective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interests becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

Under this provision, after filing lapses the interest of the secured party is subject to defeat by purchasers and lienors even though before lapse the conflicting interest may have been junior. K.S.A. 84-9-403, Official UCC Comm. 3. Subsection (2) above does not vary from the 1972 Official UCC Text.

Plaintiff does not dispute that the FmHA failed to file a continuation statement covering its May 22, 1978 financing statement. Under K.S.A. 84-9-403(2) that financing statement lapsed five years later, on May 22, 1983. Defendant Central Livestock, which gave value for and received the livestock in 1981, was a buyer in the ordinary

course of business as defined in K.S.A. 84-1-201(9). Plaintiff's status as an unperfected financing statement, relates back in time to 1981 as against Central, a post-perfection, pre-lapse purchaser. K.S.A. 84-9-403(2). The rights of the two parties are governed by K.S.A. 84-9-301(1)(c), which states that an unperfected security interest is subordinate to the rights of a buyer of farm products in the ordinary course of business. Defendant Central is entitled to judgment on the merits.

IT IS ACCORDINGLY ORDERED this 23 day of August, 1985, that summary judgment be entered in favor of defendant Central Livestock Corporation on plaintiff's claim of conversion of certain specified livestock valued at $29,755.81.

/s/ Patrick F. Kelly
Judge